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No. _____

**In The
Supreme Court Of The United States**

OCTOBER TERM, 1989

ALFRED TRUMPOLD AND LINDA TRUMPOLD
Petitioners

v.

**ROBERT BESCH AND THE
DOUGLAS BATTERY CORPORATION**
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE
STATE OF CONNECTICUT

**RESPONDENTS' BRIEF IN OPPOSITION
TO CERTIORARI TO THE APPELLATE COURT
OF THE STATE OF CONNECTICUT**

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LIST OF PARTIES AND RULE 28.1 LIST

The parties to the proceedings below were the petitioners Alfred Trumpold and Linda Trumpold, and the respondents Robert Besch and the Douglas Battery Corporation.

Respondent Douglas Battery Corporation has no parent companies, subsidiaries, or affiliates to list pursuant to Rule 28.1

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STATEMENT OF ADDITIONAL FACTS

The parties agreed to the date, time, and location of the accident. They were at issue on every other material aspect of the case.

Alfred Trumpold testified that he was stopped at the light for about one or two minutes when he was hit from behind (T. 7/23/87, p. 74; 7a). He said that he felt pain in his lower back a couple of seconds after the crash (T. 7/23/87, pp. 75, 76; 9a).

Linda Trumpold's version of this rear-end collision was shown to the jury on videotape. She stated that she heard a big bang, and she was thrown forward. She lost her vision, and her neck hurt a lot (T. 6/8/87, p. 20; 1a). After the initial impact, she still could not see, but she heard her husband moaning. Her daughter was crying and wanted to get out of the car. In the meantime, Linda was trying to find the door handle without her vision. Her eyesight eventually came back (T. 6/8/87, p. 21; 2a). She then saw her husband clutching the steering wheel. He had tears coming out of his eyes, and he was looking in the rear view mirror as though he was in a lot of pain (T. 6/8/87, p. 22; 3a). She exited the car because she thought it was going to explode. However, she did leave the children in the car (T. 6/8/87, p. 23; 3a). After she was talking to Robert Besch for a while, she remembered that the children were still in the car, and she went back to talk to them (T. 6/8/87, p. 23; 4a).

Robert Besch testified that he tapped the bumper of the Trumpold car (T. 8/3/87, p. 5; 36a). He stepped out of his car, walked to the front of it, and met Linda Trumpold who was standing at the right rear quarter of her car (T. 8/3/87, p. 6; 37a). The only damage to his car was on the black bumper pad (T. 8/3/87, p. 8; 38a). He inquired as to the condition of the people in the Trumpold car, and he was told that no one was hurt (T. 8/3/87, p. 9; 39a).

No ambulance was called (T. 7/29/87, p. 65; 27a). Instead, the Trumpolds got into their car and drove home. Before going to the hospital to be checked, Linda Trumpold made some telephone calls (T. 7/29/87, p. 67; 29a).

The record from the hospital visit of July 21, 1981 indicated that Trumpold arrived at 5:15 and was discharged at 6:30 (T. 7/29/87, pp. 69, 70; 30a). At that time, he denied hitting any part of his body. He had no neck pain, no headaches, and no numbness except for the same problems which he said that he had prior to the accident (T. 7/29/87, pp. 70, 71; 31a). He acknowledged to the doctors at the hospital that he did have numbness prior to the accident (T. 7/29/87, p. 71; 32a). His complaint was of pain in the mid to lower back related to movements (T. 7/29/87, p. 70; 31a). Although they told him at the hospital that he should take two or three days of bed rest and apply moist heat, Trumpold called work the following day and told them that he would be out indefinitely (T. 7/29/87, pp. 57, 72; 33a, 34a).

The Trumpolds' car was appraised, and the estimate to replace the bumper was \$75.00 (T. 7/23/87, pp. 8, 9; 6a).

Trumpold testified at length, attributing his back pain, inability to work, and inability to have a satisfying sexual relationship with his wife to the accident of July 21, 1981 (T. 7/24/87, pp. 37-45; 11a-20a).

Under cross-examination, Trumpold admitted that he had surgery on his low back in 1980, and that he had sought Social Security disability benefits more than one year prior to the accident, claiming that he was totally and permanently disabled from employment (T. 7/29/87, pp. 28, 29, 87; 21a, 22a, 35a). Trumpold's work record disclosed that he had missed 223 days of work in 1980 (T. 7/29/87, p. 55; 24a). From November, 1979 until July of 1981, he was absent from work approximately 255 days out of a possible 400 (T. 7/29/87, p. 56; 25a). He was out of work for a total of seven weeks in 1981 prior to the date of the accident (T. 7/29/87, p. 55; 23a).

In light of the evidence concerning the nature of the accident and the prior claims of disability, the Trumpolds' credibility on the issues of damages and causation was called into question by the defense.

REASONS WHY THE PETITION SHOULD BE DENIED

I. No federal question is raised by the decision below.

The Appellate Court did not base its opinion on a “non-existent critical fact.” Nothing in the reported decision supports the petitioners’ assertion that the Appellate Court “held that the jury in Trumpold could have found that Alfred Trumpold did not seek medical assistance immediately following the accident, but instead consulted an attorney.” (See petitioners’ brief, p. 15; appendix to petitioners’ brief 1A-10A). The reported decision contains a reference to the defendants’ arguing that the Court properly allowed the evidence because Linda Trumpold’s actions following the accident tended to corroborate the defendants’ version of the occurrence, because Alfred Trumpold did not seek medical assistance immediately following the accident, but instead consulted an attorney. (19 Conn. App. at p. 26; appendix to petitioners’ brief 4A). The Appellate Court then stated:

After reading the transcripts and considering all other relevant information, we agree with the defendants that asking the plaintiffs when they first contacted their attorney following the accident was permissible on these particular facts. Under other factual circumstances, such evidence might be inadmissible.

(19 Conn. App. at p. 26; appendix to petitioners’ brief 4A).

Thus, the petitioners’ claim that the Appellate Court based its decision on a “non-existent critical fact” is groundless.

The petitioners’ claim in the first question presented (apart from that concerning a “non-existent critical fact”) appears to be that the evidence that Linda Trumpold called her lawyer the next day is not relevant. (See petitioners’ brief, p. 18).

Rule 611(b) of the Federal Rules of Evidence sets out the permissible scope of cross-examination:

Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of witnesses. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct exam.

According to *McCormick on Evidence*, the first function of cross-examination is to shed light on the credibility of the direct testimony:

As to the first function, that of evaluating the credibility of the evidence given on direct, . . . the test of relevancy is not whether the answer sought will elucidate any of the main issues, but whether it will to a useful extent aid the Court or jury in appraising the credibility of the witness and assessing the probative value of the direct testimony.

McCormick on Evidence (3rd Ed.) Section 29, p. 63.

In both civil and criminal cases, the scope and extent of cross-examination with respect to an appropriate subject of inquiry rests in the sound discretion of the trial court. (See *Alford v. United States*, 282 U.S. 687, 51 S.Ct. 218, 75 L.Ed. 624 (1931); *Smith v. Illinois*, 390 U.S. 129, 88 S.Ct. 748, 19 L.Ed. 2d 956 (1968); *Glasser v. U.S.*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680, reh. den. 315 U.S. 827, 62 S.Ct. 629, 86 L.Ed. 1222 (1942)). This Court has held that no obligation is imposed on a trial court to protect a witness from being discredited on cross-examination, short of an attempted invasion of his constitutional protection from self-incrimination, properly invoked. (See *Alford v. United States*, 282 U.S. at 693-694).

The Appellate Court's holding that the trial court did not abuse its discretion in making its evidentiary ruling was

in accord with both state and federal law and did not violate the petitioners' constitutional rights.

II. The question on cross-examination complained of by petitioners did not elicit information protected by the attorney-client privilege.

Rule 501 of the Federal Rules of Evidence provides:

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, state, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the Courts of the United States in light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

In its decision, the Appellate Court, citing *State v. Manning*, 162 Conn. 112, 120, 291 A.2d 750 (1971), noted that the Connecticut Supreme Court held that Connecticut is in accord with the majority rule that the attorney-client privilege does not extend beyond communications and that an attorney is not bound to remain silent as to all information regarding his client, but only as to that information born of confidential communication. The Appellate Court held:

Because our law is clear that the privilege applies only to "information born of confidential communication," we decline to hold that the trial court's evidentiary ruling that permitted defense counsel to ask the plaintiffs, as witnesses, when they first con-

tacted their attorney violated the confidentiality of their privileged communications. (19 Conn. App. at 28; appendix to petitioners' brief 6A).

In a footnote, the Appellate Court declined to examine the plaintiffs' state and federal constitutional claims in this regard "[i]n light of our holding that defense counsel's questions did not abridge the plaintiffs' attorney-client privilege." (19 Conn. App. at 28; appendix to petitioners' brief 6A).

Beyond the above, Connecticut is in accord with federal law on this issue. Federal courts have held that the identity of a client or the fact of being a client of an attorney is not privileged information. *Colton v. United States*, 306 F.2d 633, 637 (2d Cir. 1962); *United States v. Bohannon*, 628 F.Supp. 1026 (D.Conn. 1985); *United States v. Ricks*, 776 F.2d 455 (4th Cir. 1985), on rehearing 802 F.2d 731, cert. denied *King v. United States*, 479 U.S. 1009, 107 S.Ct. 650, 93 L.Ed. 2d 705 (1986).

Since no privilege attached to the fact that Linda Trum-pold called her lawyer, the trial court properly admitted the evidence, and there was no violation of the petitioners' constitutional rights.

CONCLUSION

The federal questions presented in the Petition for a Writ of Certiorari are spurious. The petition should be denied.

Respectfully submitted,

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**Excerpts from direct examination of Linda Trumpold,
6/8/87, pp. 20-23**

A Yes. We waited for the light to change.

Q In other words, was it just when you got there that this —

A No.

Q — event occurred?

A We had already been stopped.

Q Now, what do you remember about that being struck from behind?

A Well, I was talking to my husband, I was showing him where the driveway was for the — I was pointing, like saying "She said there is a driveway behind the Thrifty Lady and a parking lot and we can pull in there and it will be easier to show her the clothes", and all of a sudden, smash. I felt like I was thrown forward; I heard a big bang and I couldn't see.

Q And did you feel anything in your body at this time?

A Yes, my neck hurt a lot.

Q Could you feel yourself move in any way?

A I don't understand.

Q Could you feel your body move at all?

A I felt like I was thrown forward and like my head snapped, like jerked.

Q And just before this happened, how were you feeling?

A Fine, except hot.

Q And then after this initial impact, what happened?

A Well, I couldn't see. I heard my husband moaning. My daughter was crying like she wanted to get out of the car. I was —

Q Do you recall anything she said?

A No, I don't. She was just afraid. I remember she wanted to get out. She didn't want to be in the car.

Q Is this what she said?

A Yes. I was reaching like — I was going like this for the door handle, but I couldn't find it because I couldn't see.

Q Gesturing with your right hand?

A With my hand. I wanted to get out of the car and I couldn't find it and I was getting scared, and my eyesight came back. I looked at my husband and he was holding the steering wheel like this and he was like looking into the rear-view mirror and he said that — I said to him, "What happened?" And he said, "We just got hit."

Q You said he was holding the steering wheel —

A The steering wheel.

Q — like this.

A Well, he had like —

MR. JACOBS: Is Mrs. Trumpold's demonstration of how her husband is holding — is that visible on the picture?

MR. MORRISSEY: Yes.

Q Because you indicated —

A Like tight.

Q — a clutching of the steering wheel?

A Yes.

Q All right. Go on. I didn't mean to interrupt.

A And he had like tears coming — like, you know, he wasn't crying, but there was like water coming out of his eyes and he was like, you know, looking in that mirror like he was in a lot of pain. And I jumped out of the car. I just wanted to get out and it was like I — I couldn't think straight; I didn't know what was happening. I knew we had been hit but I didn't know what to do. I just knew I wanted to get out of the car. I even forgot that Jennifer and Michael were in the back seat. You know, I felt terrible later on when I remembered that they were in the back, because I don't know why I didn't think of it. I guess it was just because I wanted to get out so bad. And then I got out.

Q And you got out the right-hand —

A Yes.

Q — passenger door in the front?

A Yes.

Q And what did you do when you got out?

A Well, I remember I was very panicky. My heart started pounding. You know, I was afraid. I didn't know what I wanted to do. I just wanted to get away from there.

Q What were you afraid of?

A Well, first I thought the car was going to explode and I don't — you know, I mean that's terrible because I left the kids in the car, but I forgot about them. After I was talking to Mr. Besch, I said, "Oh, my God, the kids are still in the car", you know, and I went back to talk to them. But before that, I was so afraid that, you know, I wanted to get out. I was afraid it was going to blow up and I couldn't think straight and I just wanted to get away from there.

Q Had you ever been in an automobile collision before?

* * *

**Excerpts from testimony of Steven Guarini,
7/23/87, pp. 8-9**

A Or even get the serial number off the car.

Q I see. And all you could say is how it was back on the 21st of September, 1981, no damage to the lens?

A Right.

Q And then you had the point of impact, right? What did you say about that?

A Rear direct.

Q And then with regard to the condition of the car?

A Paint was poor, the interior was worn, and the mileage was around the clock, over a hundred thousand miles.

Q I see. So up there it says mileage, what do you have for mileage?

A It shows twelve thousand, three hundred and eighty-nine, but it's circled, meaning that it's around the clock.

Q A hundred and twelve thousand, three eighty-nine.

A Right.

Q Is that an 8 or a five? Can you tell?

A It looks like an 8.

Q Okay. Did you proceed to do your appraisal to figure out what the value of this loss was?

A Right.

Q And if you would sir, just show us what items you referred to and how you arrived at your figures?

A Looking at the car I felt the rear bumper needed to be replaced. Given the overall condition of the car it didn't justify a brand new bumper or even a rechrome. I would have gone for a rechrome bumper had I not been able to find a used bumper, given the condition of the car I wrote it for a used bumper.

Q Okay. And just what did you do? What numbers did you come up with? How did you arrive at them?

A Flat rate labor to install the bumper is 1.2 hours. The price quoted by the salvage yard was seventy-five dollars. The trunk lid I had —

Q Just stick to the bumper. So how much was that for the bumper?

A The bumper was seventy-five dollars for the part, plus sales tax and 1.2 hours at twenty-two dollars an hour.

Q How much did that come out to? Do you need a calculator?

A No.

Q Here's a calculator, if it will help you.

A It comes to twenty-six forty for labor. Twenty-six dollars and forty cents for labor.

Q How much did you save for the used bumper?

A The used bumper was seventy-five dollars, plus tax. Total cost of the bumper, labor part and tax came to one 0 seven 0 two.

Q That was a used bumper, wasn't it?

A Correct.

Q Now, supposed you used a rechromed bumper. You ***

**Excerpts from direct examination of Alfred Trumpold,
7/23/87, pp. 74-76**

Q From the time that your car stopped there, until it was struck from behind, did the color of the traffic signal ahead change?

A No sir.

Q What color was it at all times?

A It was red.

Q From the time that you stopped your car there, until it was struck from behind, did any of the cars ahead of you at that red stoplight move?

A No sir.

Q Now will you please describe just what you felt when your car was struck from behind?

THE COURT: Mr. Jacobs, I don't want to interrupt you, but if you're not going to use the picture, he should be back on the stand.

MR. JACOBS: I think that's right, your Honor, thanks. I didn't want him going up and down and perhaps I hope I'm through because I don't want to make him keep going up and down. Thank you. Well, Mr. Trumpold, about how long had your car been at that light before it was struck?

A About a minute and a half, two minutes.

Q A minute and a half — what?

A A minute and a half, two minutes.

Q Okay. An appreciable time.

A Yes sir.

Q Okay. You hadn't just come there.

A No sir.

Q And before your car was stopped from behind, did you observe whether there was any car stopped behind yours?

A No sir, there wasn't any car behind me when I stopped.

Q And what was the first that you knew that there was a car behind yours?

A When I got hit.

Q And when you got hit, what did you feel like?

A It's like somebody grabbing a hold of you and just, you know, throwing you forward and pulling you back.

Q And at the time your car was stopped there, where was your right foot?

A On the brake.

Q And was that during the whole time?

A Yes sir.

Q Including when your car was struck?

A Yes sir.

Q And when your car was struck, did you hear anything?

A Yes sir.

Q What did you hear?

A A crash.

Q Now the place beside the road towards the right that's the Keeling (phonetic) Company?

A Yes.

Q Keeling?

A Keeling Glass Company.

Q What's that?

A Keeling Glass Company.

Q Yes. And you heard Mr. Michael Slocum (phonetic) testify here at the beginning of this case did you?

A Yes sir.

Q He said that he worked there?

A Yes sir.

Q Did you know Mr. Slocum?

A No sir.

Q Now when your car got hit, you told us how it felt to you.

A Yes sir.

Q Did you feel any bodily sensation?

A Yes sir, I felt pain in my back.

Q In what part of your back?

A The lower part.

Q And when was this with respect to when this event occurred?

A Like a couple of seconds after we got hit.

Q And what did you do at the time that this happened?

A What did I do?

* * *

**Excerpts from direct examination of Alfred Trumpold,
7/24/87, pp. 37-45**

Q All right. Just tell us what there was about the job and what there was about the condition you were in to make those two things not doable at the same time.

A Well, my job at Pratt and Whitney consisted of alot of bending, alot of lifting, excessive amount of walking.

Q How much walking?

A Alot.

Q Just describe that for us. I've got some idea of the length of the place.

A All right. The length of Pratt and Whitney is roughly a quarter of a mile long, the building. From the parking lot to the center of the building is roughly one eighth of a mile. We used to have to walk that in and out. The cafeteria is downstairs for lunch or supper, whichever shift you were working. That consisted of almost all the way out to the building because the cafeteria doors were just maybe a few feet down the hall from where you came in. In Pratt and Whitney you go down to a tunnel which went full length underneath the building and it would have stairways going up at different intervals through the floor and you found which one you'd take. Roughly it would be the shortest one going to your department. That was in the very front of the building where the tunnel goes through. It's off of that tunnel where that cafeteria is.

Q And so I guess you've given us some idea of the size of the place.

A Yes sir. It's a very good size building.

Q So what was there about the things you had to do over at Pratt and Whitney you couldn't do because of how you were feeling between the 21st of July and the 27th of August 1981?

A What I couldn't do?

Q Yes. I mean, why didn't you go back to work?

A Well, like I said, I couldn't do the walking. I couldn't do lifting. I couldn't do the bending. You know, I couldn't stand up for a length of time or sit down for a length of time. I had to lay down most.

Q Incidentally, now do you have any trouble standing up for a length of time now or sitting down for a length of time?

A Yes. Like right now it's bothering me.

Q How's that?

A Right now I'm getting alot of pain from sitting down. I can sit down roughly for like an hour, hour and a half. Then it starts to get to me.

Q Just what is it that gets to you, Mr. Trumpold?

A It's a nagging pain. It's very nagging. It's hard to describe. The only — I don't know. I don't know really how to describe it. It's like somebody has a knife in there and they are turning it back and forth. That's what it feels like.

Q It comes on you when you've been sitting for a while?

A Yes. It starts progressively getting worse, you know. It just starts off and just keeps going and going. It just keeps like magnifying, I guess you'd call it.

Q And what do you do about it?

A There's not much you can do about it. Just get up and walk around. That helps relieve it some. Sometimes if it's real bad I lay down. It's about all you can do.

Q What about standing up for a long time? Does that give you any problem?

A Standing up does the same. It gives you a lot of pain between your back and your leg. It's basically the same kind of pain only — I don't know whether it's nerves or what. They go down your leg. You can feel it in there. It's like it's pulling.

Q It's when you are standing?

A After a while, yes.

Q Uh-huh. So now we are back in the summer of 1981 and you were telling us why you couldn't go back to work at Pratt and Whitney.

A Yes sir.

Q And had you pretty well described what your range of your activities was during that time?

A Yes, I guess. There's not very much.

Q How did you feel about that?

A It bothered me. I'd rather be working.

Q And a typical day of work, how did you feel about it?

A About work?

Q Yes.

A I love to work. I used to go in. There's another fellow that run the productor right beside me. There's like two machines. There would be one here and there's one here. There's one platform in between and there's a table on it with our gauges. He's be running this machine and I'd be running this one so we'd be there together basically all day. We'd sit there and we'd talk about different things and machines and different operation and stuff like that. He had been there a little bit longer than I was. He used to tell me about some of the people that worked there before and stuff like that. The foreman would come by and kid. Where our machines was is right beside the general foreman's office. He used to come out and sit down and chew the fat for a little while. It was nice. We had a very good relationship with everybody basically.

Q How did your work day go? Did it drag?

A Oh no. It went by fast.

Q Then you'd go home and be with your family?

A Yes sir.

Q How was the anticipating of that for you?

A What? Going home?

Q Yes.

A Oh, I loved going home. You know, like getting out of work and going home and seeing the wife and kids. It was like, I don't know, the Brady family. You know. Everything is perfect and that was the way it was going. Everything was good.

Q I want you to think mostly back to the time when you returned to work after Doctor Cramer cleared you to return to work on June 3rd, 1981 through the 21st of July, 1981. How was it during that period?

A It was good.

Q Is it the way you just described to us?

A Yes sir.

THE COURT: I'm going to give the Jury a five minute recess at quarter after to just let you know.

MR. JACOBS: Okay.

THE COURT: You've got seven more minutes.

MR. JACOBS: So Mr. Trumpold, your days during that summer of 1981, how did they go by when you weren't working?

A Well, the summer — well, actually every day passed by quickly. It seemed like years were going by real quick.

Q What I'd like you to think about is how was it during this summer when you — after you had gotten hurt on the 21st of July? I think we all agree our time is flying.

A You mean after the accident?

Q Yes.

A Time dragged. It was very boring, very depressing.

Q Please describe what you mean when you say it was boring.

A When you are an active person like I was and then all of a sudden you can't and you've just got to sit there, lay there, it seems like every minute is an hour long.

Q And you said it was depressing.

A Yes sir.

Q Why did you say that?

A Because I couldn't work.

Q Why were you depressed because you couldn't work?

A Because I like to work.

Q Just before this collision occurred how were you doing as far as earning money?

A Good.

Q Because you had been out in the spring, hadn't you?

A Yes.

Q And you had gotten back to working again?

A Yes.

Q And when was it about the time you and Linda were looking for a house?

A I would say that was the spring of '81.

Q Spring of '81?

A Yes.

Q When you were working or while you were out?

A I think a little bit of both.

Q Uh-huh. So you were planning to get a house?

A Oh yes. We looked forward to it.

Q Planning to keep working?

A Sure. Definitely.

Q Okay. That summer was — were the days like one another? Did they differ from one another?

A I don't know what you mean.

Q In other words, do you remember any variety about what happened to that summer or were things pretty much the same?

A Well, like I said, we were looking for houses. We were excited about that.

Q I'm sorry. I'm talking about the summer right after you got hurt.

A Oh. After I got hurt?

Q Yes.

A Then we weren't doing anything. As I said, it was very depressing.

Q Uh-huh. Was there any variety in your routine?

A Not really, no. I'd just sit there, lay there. You know, you can't do anything.

Q Did you go out of the house and go drive some places?

A I tried, yes.

Q What do you remember about that?

A Let's see. I remember we went shopping.

Q How was Linda doing during this time?

A What? After July?

Q Yes. During that month of — from July to the second time you saw Doctor Fasano.

A She was getting better. You know, her neck didn't bother her as much. She started getting a little hesitant about going outside. She didn't really want to get in the car.

Q Uh-huh. How were you two getting along?

A I would say we were getting along good.

Q Even though you both weren't feeling so good?

A Right. I mean, we could understand one another's problems.

Q Uh-huh. How had you been getting along before this collision?

A Very good.

Q You went out. After a while you went out shopping and stuff, driving?

A Yes.

Q In other words, you weren't confined to the home or anything like that?

A No.

Q You were doing the driving after a while?

A Yes sir. It would drive me nuts if I had to sit there besides my wife driving, you know. I don't know. I guess you have to feel like a macho man and you do the driving.

Q What car were you using?

A We were using the Buick.

Q Now how were you and Linda doing as far as your physical, your sexual relationship, right after July 21st, 1981?

A None.

Q None?

A None.

Q And how long did that continue?

A I know it was all between the time of the accident until I went to see Doctor Fasano the second time.

Q You had no sexual relations at all?

A No sir.

Q Why was that?

A Basically because, you know, at the very beginning we were both in alot of pain. After that my back was still bothering me alot. I was scared to really try.

Q Why were you scared?

A Well, it's hard to describe. When you are lying down, if you start moving around in your bed you are not really getting the — like good control over your body. It's the only way I can describe it. Your body will twist and stuff at times, you know, in the mattress, you know, while you are laying in the mattress. When it does that it hurts. At that time I didn't even want to think about doing it.

Q And how did you feel about that?

A I didn't think much of it but my wife did.

Q What do you mean?

A She wanted to try it. I told her I was scared to.

Q Did she tell you how that made her feel?

MR. ZEMETIS: Well — I'll withdraw it. Go ahead.

A She kept indicating that she thought that it was her fault and not mine. I kept telling her — I said it's not you. I said I just don't want to try it because of my back.

MR. JACOBS: So between those two dates you said that you didn't have any sexual relationship?

A No.

Q How did that make you feel?

A Like I said, to me — I guess I had it justified in my own mind that I didn't want to do it so I kind of accepted it but my wife didn't. It bothered her alot.

Q Having to come to terms with it and accept that you couldn't have this relationship with your wife, how did that make you feel?

A Not very good.

THE COURT: All right. We'll take a five minute recess at this point. Ladies and gentlemen, I'm cutting short the recess because we are only going to go to twelve o'clock. I'll ask counsel to be ready to go in five.

(Whereupon, a recess was taken at 11:17 a.m. and resumed at 11:23 a.m.)

* * *

Excerpts from cross examination of Alfred Trumpold,
7/29/87, pp. 28, 29, 55-57, 65, 67, 69-73, 87

MR. ZEMETIS: Z-I-E-D-M-A-N.

THE COURT: Okay.

MR. ZEMETIS: And you saw Dr. Ziedman?

A Yes sir.

Q And he's in Cheshire, right?

A Yes sir.

Q You saw him on three occasions?

A Yes sir.

Q Now, when you went to each one of these doctors, did you tell each one of these doctors — Let me start this again. You went to Dr. Poverman, Dr. Ziedman and then you went to Dr. Greenwald?

A Yes sir.

Q With regard to each one of those three doctors you went to them because you were suffering from a low back problem?

A Yes sir.

Q And you were in excruciating pain?

A Yes sir.

Q And your symptoms were low back, right sided, right leg, numbness, pain going down the leg, all three of them?

A Yes sir.

Q As a consequence of that you went into St. Raphael's Hospital in February of 1980 and you had a disc removed partially?

A Yes sir.

Q And that was on the right side, was it not?

A I guess so.

Q L4/L5 on the right and if we pull out the record it would read the same thing?

A Yes sir.

Q All your problems were right sided?

A Yes sir.

Q After that time, February of 80, you were under the care of Dr. Greenwald exclusively?

A Yes sir.

Q In June of 1980 you tried to go back to work?

A Yes sir.

Q They required you to sign an acknowledgement of defect, that you had a defective low back laminectomy L4/L5 on the right?

A Yes sir.

Q You signed that?

A If I didn't I couldn't go back to work.

Q You signed that?

A Yes sir.

Q And you gave that to Pratt and Whitney and Mr. Jacobs exhibited that to the Jury?

A Yes sir.

Q You worked three days?

A Yes sir.

Q And you were in such excruciating pain that you ***

* * *

A No sir.

Q You had six weeks off in April and May?

A Yes sir. Just for Dr. Kramer.

Q Well six weeks off there?

A Yes sir.

Q You had a week off in February?

A Yes sir.

Q You went down to the nurse on nine pages worth of notes between November of 1980 and July, 1981.

A November of 80?

Q November of 80. That's when you went back to work. You had all those back problems and you were trying to find a machine that would accommodate you.

A Medical records, yes sir.

Q Alright. If you add those up sir, and the employer does add them up.

A Yes sir.

Q You know. You looked at all these records?

A Yes sir. I know Pratt and Whitney —

Q In 1980 you missed two hundred and twenty-three days.

A Yes sir.

Q You worked five days a week?

A Yes sir.

Q Fifty-two weeks a year?

A Yes sir.

Q Take off two weeks for vacation?

A Yes sir.

Q Take off what about ten or twelve days for holidays?

A Something like that.

Q You worked something in the area of eight or nine days that year?

A Yes sir.

Q The next seven months of employment, at least from the records that I can see you missed thirty-two days of work?

A Yes sir.

Q In those seven months there was twenty working days a month?

A Yes sir.

Q You're out thirty-two out of that?

A Yes sir.

Q If I add them up from November of 80, excuse, November of 1979 until July of 80, for a period of about eighteen months, you were absent from work approximately two hundred and fifty-five days out of a possible four hundred?

A Yes sir.

Q About 62% of the time you were not there?

A Yes sir.

Q Does that seem right to you?

A Yes sir.

Q Now you told me that when you're out of work for, not coming in for a day you call in?

A Yes sir.

Q And you saw those work records that I showed you a moment ago with the daily notations of whether you're there or you're not there, right?

A Yes sir.

Q Looking at the chart each day, labeled out right? Correct?

A Yes.

Q July 22, you called in didn't you? July 22, 1981, the day after this collision, you called in?

A Yes sir.

Q You told them a car accident, out indefinitely?

A Yes sir.

Q Okay. Now you have been to the World War II Veteran's Memorial Hospital the night before, correct?

A Yes sir.

Q And they told you to take two to three days of bed rest, apply some moist heat?

A Yes sir.

Q When you called in you told them you were out indefinitely?

A Yes sir.

Q Now sir, July 21, 1981, automobile accident happened at Quinnipiac Street, correct?

A Yes sir.

Q It happened around four thirty in the afternoon?

A Yes sir.

* * *

* * *

A Yes sir.

Q And that's what you're claiming here, right?

A Yes sir.

Q And you're claiming that your wife got out of the car and she also made complaints that she was injured?

A Yes sir.

Q Right there at that scene?

A Yes sir.

Q And you told that to Mr. Besch?

A Yes sir.

Q Okay. And did you call the ambulance?

A No sir.

Q Did you call the emergency medical technicians?

A No sir.

Q Did you call the police?

A No sir.

Q Did you call the fire department?

A No sir.

Q Did you call a neighbor?

A No sir.

Q So as I understand it, you're hurt and your wife is hurt, is that right?

A Yes sir.

Q And you're right here in the middle of a beautiful day, in the middle of the downtown are, Wallingford?

A Yes sir.

* * *

*** those things, did you sir?

A Mr. Besch didn't want to, no sir.

Q You didn't so anything?

A No sir.

Q You were hurt weren't you?

A Yes.

Q And your wife was hurt?

A Yes.

Q And you just didn't do any of those things, that's what you would have us believe, right?

A Yes sir.

Q Okay. Then you got in your car and you drove home?

A Yes sir.

Q When you got home, is it your testimony that your wife had started making calls to various people to get instructions about what she ought to do?

A No sir.

Q Did your wife call her father?

A Yes sir.

Q And who else did she call?

A The police station.

Q Who else did she call?

A That's all I know before we went to the hospital.

Q I see. Is it your recollection that she called Att. Jacobs that night or the next morning?

A I don't —

* * *

***hospital?

A I don't believe so, no sir.

Q Do you remember if it's when you came back from the hospital?

A No sir, I think it was the next day after we got back from the police station.

Q Your wife has said she called him before she went to the police station, is that your recollection or you don't recall?

A I don't remember exactly sir.

Q Alright. Is that before you called into work?

A I called into work the morning of the 22nd.

Q Before you called Mr. Jacobs or afterwards?

A I don't remember.

Q Now when you went to the World War II Veteran's Memorial Hospital on 7-21, in the afternoon, did you tell them anything was bothering you?

A As far as I can remember, yes sir.

Q You had x-rays there?

A Yes sir.

Q They did a complete examination on you there?

A I guess.

Q You were there sir, you tell us.

A I don't know exactly, you know, what you mean by a full examination.

Q Mr. Trumpold, you have a medical history that is five inches thick, you don't know what a medical examination is.

A Well compared to the other doctors that have seen me, no sir they didn't.

Q Alright. Well that's what I asked. You got in there at five fifteen and you were discharged at six thirty?

A Yes sir.

Q Seem right to you?

A Yes sir.

Q And that includes the time that you had to wait, the time that they took the x-rays?

A Yes sir.

Q And the time of the examination?

A Yes sir.

Q And from the time you gave them your complaints and problems at that point?

A Yes sir.

Q And you denied hitting any part of your body, right?

A Yes sir.

Q You had no neck pain?

A No sir.

Q And you had no headaches?

A No sir.

Q And you had pain in the mid to lower back related to movements?

A Yes sir.

Q And you had no numbness except for the same problems that you've been having prior to the accident?

A Yes sir.

Q So did you acknowledge to these doctors that you were having numbness prior to the accident?

A A certain amount, yes sir.

Q And you denied any other problems?

A Yes sir.

Q And you were walking. You were in no distress?

A Yes sir.

Q So the next morning you called into Pratt and Whitney, you told them you would be out indefinitely?

A I don't know the exact words, sir, but I remember I called in and said that I wouldn't be in. I think they put the indefinite in afterwards.

Q You ever seen that record?

A Yes sir.

Q And why do you say they put that on afterwards?

A Well, they could write it in at anytime.

Q Oh I see. Before when I asked you that question you told me yes, you told them you were going to be out indefinitely.

A As —

MR. JACOBS: Excuse me. He was making an answer. May he be allowed to complete his answer?

MR. ZEMETIS: Alright. He nodded to me. I think we better get it on the record. Is that right sir?

MR. JACOBS: May the tape be played back Your Honor, because I think we have one more episode of the plaintiff not being allowed to answer? May the record be played? Mr. Zemetis, maybe will understand the point. I'm sure he's not doing this intentionally. Maybe he'll understand the point that I'm making when he can hear himself on the record, interrupting Mr. Trumpold.

THE COURT: I'm not going to play the record back. I heard what was going on here. Put the question.

MR. ZEMETIS: Thank you sir. Mr. Trumpold, is it accurate that you testified previously that on 7-22-81 you called Pratt and Whitney and told them you'd be out indefinitely?

A That's what it says in the records sir.

Q I'm not asking what it says on the record. I'm asking you, didn't you ever testify to that here about forty-five minutes ago?

A Yes sir, I testified to what was written in the record.

Q I'm not asking you what was in the record now. Listen very carefully I asked you if that's what you told them on that date sir.

A The answer that I gave you is for what was standing in the record. I know I called in, exactly what was said I cannot say for sure. I do not believe I said indefinite.

Q You don't remember what you said anymore?

A No sir.

Q You want to change the answer that you gave before?

A Like I said, the answer that I gave you before was what I figured must have been said, because it's in the Pratt and Whitney record. That's all I know is what it says in the record.

Q You don't have any recollection of what you said at all?

A I know that I called in and said I was in a car accident and that I wouldn't be in.

Q Alright. With regard to being out indefinitely which the record says you don't know if you told them that then or if they doctored the records later on and put that in?

A Yes sir.

Q But isn't it accurate, sir, that when you went to the hospital in Meriden they told you you were going to be out two or three days of bed rest?

A Yes sir.

Q Or put some moist heat on?

A Yes sir.

Q Alright. Now, excuse me, a couple of days after this accident you went to see Dr. Fasano?

* * *

A Well what do you consider substantial?

Q I'm not going to debate it with you sir. Is it true that in June of 1980, the year before this accident happened you signed an application for social security, disability benefits indicating that you were totally and permanently disabled from gainful, substantial employment?

A I applied for social security, yes sir.

Q I asked you if you had signed that application for that?

A I don't know exactly what form it was, but I did apply for social security, yes sir.

Q Social security, disability benefits, right?

A If that's what it was I guess so, yes sir.

Q A year before this accident?

A Yes sir.

Q In your mind at that time, you were totally and permanently disabled from substantial and gainful employment?

A No sir.

Q So you filed an application with the United States Government for other reasons?

A No sir.

Q Now in April of 82 you had low back surgery with Dr. Frankel, correct?

A Yes sir.

Q And when you were leaving the hospital didn't they give you instructions about what to do?

A Somewhat yes.

* * *

**Excerpts from direct examination of Robert Besch,
8/3/87, pp. 5, 6, 8, 9**

*** me.

Q And how many cars were ahead of you?

A An approximation would say anywhere from five to seven cars.

Q Alright. Were cars stopped behind you, do you recall?

A There were cars behind me.

Q Alright. Well, what happened then after you stopped on this road?

A Well we were sitting there waiting for the light to change, waiting for the traffic to move ahead. And the car in front of me had moved ahead and then stopped quite abruptly. Not being able to see any brakelights on the car and moving ahead along with the flow of traffic, the car ahead of me suddenly stopped and I inadvertently tapped him on the bumper.

Q You said that this whole line of cars was stopped at a red light. Can you tell me how it was that this line of cars started to move forward?

A Well as you might have experienced yourself, it appeared as though they were taking up slack that had been from positioning themselves to the light and they all sort of moved up a few feet or pulled ahead, whatever. Not able to see the cars any further then what was just ahead of me I'm assuming that's just what they did.

Q Alright. And after the front of your car, well what parts of the cars came into contact with one another?

A Well it was the front of my car and the rear of the car in front of me, rear bumper.

Q Now, did you get out of your car at that time?

A After the tap I put the car in park and I sort of sat there for a moment waiting for maybe the occupants to turn around and me to signal to them sorry, it was just a tap, everybody alright, but it then appeared as though a lady had stepped out of the passenger side and at that time I felt well we better get out and really have a look and see what we've done.

Q When you say we, was there anyone else in the automobile with you?

A Well, no, myself.

Q Okay.

A I'm saying to myself.

Q Okay.

A I should get out then and present myself.

Q Did you?

A I did. I walked around, looked at the front of my car to assure myself that the amount of noise which was just a small tap, and could be nothing more than just that. So I walked around the front and observed the car in front of me and by this time a lady had walked back and stood at the right rear quarter panel of the car. And I said to her, "gee I'm sorry."

Q Okay. Just a moment. Before you go any further. You got out of the driver's side of your car?

A Yeah.

Q You walked between the two automobiles?

* * *

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Q Where was it taken?

A That was taken in my driveway.

MR. ZEMETIS: I'm offering it as a full Exhibit Your Honor.

THE COURT: It may be marked as a full Exhibit. Defendant's 3 I believe it is.

CLERK: Yes, Defendant's Exhibit 3.

MR. ZEMETIS: Thank you.

Introducing Defendant's Exhibit #3:

MR. ZEMETIS: Ladies and gentlemen, I hold before you Defendant's Exhibit #3, the photograph, which is the front of Mr. Besch's car. And Defendant's Exhibit #2, which is the rear of Mr. Trumpold's car after this collision occurred. And I think what I'll do is I'll just pass them so that you can look at it as much as you care to. All set? Mr. Besch, you indicated, if you can just stay where you are, could you show us where the damage to your car was as a result of this?

A Let's see, it was right on the bumper guard here.

Q Right on the bumper pad?

A Yeah, on the bumper pad.

Q A black bumper?

A Yeah it would be the black section right over here.

Q Was there any other damage to your automobile?

A None whatsoever.

Q Was there a radiator broken?

A The car had no radiator breakage, no damage whatsoever.

Q Okay. Let me pick up where we dropped off. You said you got out of the automobile, you observed the automobiles. And then what did you do?

A I looked at both automobiles, saw that there was no damage to my car. I couldn't see any damage to the car in front of me. I once again said to the lady, "I'm sorry, is everyone okay?" "Is anyone injured?" She walked back to the car and put her head in the car and says, "Is anyone injured?" She came back, no one is injured. So I said, "Well, again I'm sorry." "Here's my card, my business card." "You're welcomed to have that." I said to her, "would you like for me to call the police, we can file an accident report here now and take care of it?" By this time Mr. Trumpold had gotten out of the car and walked back. He didn't say anything. He looked at both cars front and rear. I said, "are you alright?" "Yes." "Would you like to call the police?" "We can call the police here." He looked again for a moment, looked. I was waiting for him to say something. Finally he said, "Well it doesn't look like there's much damage." "Anybody hurt?" He said to his wife and the children in the car, indicated no. And I said, "Well, alright, sorry once again." He got back into his car, I got in my car and we both drove off. It was a period of time maybe five/six minutes.

Q Di you obtain their names and so forth?

A Yes I did, yes. Because I had only been with the company a short period of time and we do have a procedure of things that you do in case of an accident I acquired their names.